IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LUANN J. CARPENTER, :

:

Plaintiff

.

vs. : CIVIL ACTION NO. 3:CV-07-2301

: (JUDGE KOSIK)

MICHAEL J. ASTRUE,

Commissioner of Social Security,

:

Defendant :

MEMORANDUM and ORDER

AND NOW, THIS 25th DAY OF JULY, 2008, IT APPEARING TO THE COURT THAT:

- (1) On December 21, 2007, plaintiff filed the above-captioned action pursuant to 42 U.S.C. § 405(g), seeking review of defendant's decision to deny her claim for social security disability insurance benefits;
 - (2) The matter was assigned to United States Magistrate Judge J. Andrew Smyser;
- (3) On July 15, 2008, the Magistrate Judge issued a Report and Recommendation wherein he found that plaintiff should be given an opportunity to present evidence to establish that she had twenty-four guarters of coverage in accordance with the Appeals

Council's Order of January 25, 2007.¹ Accordingly, the Magistrate Judge recommended that the instant action be remanded to the Commissioner with instructions to afford the plaintiff an opportunity to present evidence consistent with the Appeals Council's Order of January 25, 2007;

(4) The defendant indicated that no objections would be filed to the Magistrate Judge's Report and Recommendation;

AND, IT FURTHER APPEARING THAT:

- (5) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a <u>de novo</u> review of his claims. 28 U.S.C.A. 636(b)(1)(C); <u>Thomas v. Arn</u>, 474 U.S. 140, 150-53, 106 S.Ct. 466 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. <u>Henderson v. Carlson</u>, 812 F.2d 874, 878 (3d Cir. 1987);
- (6) Having examined the Magistrate Judge's Report and Recommendation, we agree with the Magistrate Judge's conclusions regarding the disposition of this action;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge J. Andrew Smyser filed July 15, 2008 (Document 12) is **ADOPTED**.

¹We note that a Notice of Appeals Council Action was filed on January 25, 2007 and an Order of Appeals Council Remanding Case to the ALJ was filed on March 19, 2007. (See R. 79-88).

(2) The above-captioned action is **REMANDED** to the Commissioner to afford plaintiff the opportunity to present evidence consistent with the Appeal Council's Order of January 25, 2007, as set forth in the Magistrate Judge's Report and Recommendation of July 15, 2008; and

(3) The Clerk of Court is directed to forward a copy of this Memorandum and Order to the Magistrate Judge.

s/Edwin M. Kosik
United States District Judge